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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
The Development of Operational, )  
Technical and Spectrum Requirements )  
for Meeting Federal, State and )  
Local Public Safety Agency )  
Communication Requirements Through )  
the Year 2010 )

WT Docket No. 96-86

DOCKET FILE COPY ORIGINAL

To: The Commission

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

The Rural Cellular Association ("RCA"), in response to the Commission's Public Notice,<sup>1</sup> hereby submits its remarks regarding allocation and utilization of the spectrum by public safety agencies. RCA submits that the Commission should encourage public agencies' utilization of commercial facilities and services by clarifying that common carrier obligations do not prohibit Commercial Mobile Radio Service ("CMRS") providers from offering services to these organizations on "most favored" terms and conditions. In support thereof, RCA shows the following:

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. Among the subscribers and potential subscribers of RCA member companies are entities and individuals involved in community and regional health and safety operations. As demonstrated

<sup>1</sup>/ Notice of Proposed Rule Making, FCC 96-155, (rel. April 10, 1996) ("NPRM").

in the record before the Commission, RCA members consistently have supported the efforts of local emergency services personnel and will continue this effort.<sup>2</sup> The record will also reflect RCA's firm commitment to the principle that decisions to provide specific services must be based upon each licensee's assessment of the market.<sup>3</sup>

In addressing the present and future spectrum requirements for public safety agencies, the Commission notes that the availability of commercial facilities may provide, at a minimum, short-term solutions to the problems of frequency congestion and interoperability among various agencies.<sup>4</sup> RCA endorses the Commission's tentative conclusion that the immediate requirements of public safety agencies can be met by greater use of commercial services.<sup>5</sup> To provide greater incentives for public safety agencies to utilize commercial services, and for CMRS providers to offer such services, RCA proposes that the following guidelines govern provision of CMRS services to public health and safety organizations:

1. CMRS services should be provided to public safety organizations on a voluntary, compensated basis; and

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<sup>2/</sup> See, e.g., In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94-102; Comments of the Rural Cellular Association, filed January 9, 1995; Reply Comments of the Rural Cellular Association filed March 17, 1995; and Comments of the Rural Cellular Association filed March 4, 1996.

<sup>3/</sup> See, e.g., In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket 96-6, Comments of the Rural Cellular Association, filed March 1, 1996; and In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket 95-185, Comments of the Rural Cellular Association, filed March 4, 1996.

<sup>4/</sup> See, e.g., NPRM at paras. 32 and 72.

<sup>5/</sup> Id at para. 87.

2. Where CMRS providers offer services to public safety organizations at preferred rates and terms, this offer may be confined to qualifying public safety agencies without resulting in liability for noncompliance with non-discrimination and anti-preference rules and policies.

The public interest benefits in ensuring that CMRS is available to public safety organizations on an as-needed basis is evident. As the Commission has noted, the wireless communications requirements of these organizations may soon exceed the availability of spectrum dedicated to their use. Similarly, the availability of CMRS to all public safety organizations provides an interim solution to the problems of interoperability of various public safety radio systems.

The public interest will be served by adoption of policies which encourage public safety organizations to utilize commercial systems and which encourage CMRS providers to offer service at attractive rates and terms. To effect this goal, public safety organizations and CMRS providers should be able to negotiate rates and terms which, on the one hand, encourage the use of CMRS spectrum for public health and safety communications requirements, and, on the other, do not jeopardize the commercial viability of the CMRS system by requiring the extension of special rates and terms developed for public health and safety organizations to the general public.

The Commission should, therefore, clarify that carriers offering special rates and terms to public safety organizations exclusively will not be deemed to be engaging in unreasonably discriminatory or unreasonably preferential activities. This assurance of regulatory protection will encourage CMRS providers to negotiate with public safety organizations and arrive at solutions for the utilization of the commercial spectrum which will benefit the public without penalizing the service provider.

RCA also suggests that the Commission avoid excessive regulation of service provision and instead, encourage public safety organizations and CMRS providers to reach agreements which will address the specific issues of each circumstance. For example, issues regarding prioritization of access may best be addressed in negotiations among the parties; certain public safety organizations will value priority access less than others. Similarly, certain CMRS providers may have a greater concern regarding the control of potentially abusive use than others. The ability of some CMRS providers to meet the capacity requirements of public safety organizations may also be an issue under certain circumstances. Accordingly, RCA suggests that the public interest will best be served where the details of CMRS service provision are the subject of individual negotiation, rather than regulation.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

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September 20, 1996

## **CERTIFICATE OF SERVICE**

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, N.W., Suite 520, Washington, D.C., 20037, hereby certify that on the 20th day of September 1996, a copy of the attached Comments was hand delivered to the parties listed below:

  
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